IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

ST.Rev..No. 222 of 2003

ORDER DATED 7.1.2003 IN TA.1219/1999 OF KERALA SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH-II, ERNAKULAM

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PETITIONER/APPELLANT IN TA/ASSESSEE:

M/S. SARAF TRADING CORPORATION,
WILLINGDON ISLAND, KOCHI 682 003.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

RESPONDENT/RESPONDENT IN T.A./REVENUE:

STATE OF KERALA.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 08/08/2007 ALONG WITH ST REV.NO.223/2003 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

S.T.Rev.Nos. 222, 223, 224, 230
231, 236 & 255 of 2003

Dated this the 8th day of August, 2007.

O R D E R

H.L.Dattu, C.J.

Since common questions of law and fact are involved in these revision petitions, they are clubbed together, heard and disposed of by this common order.

2. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act as well as the Central Sales Tax Act. The assesee is an exporter of tea. As an incentive for effecting exports, the petitioner became entitled to apply for REP licence in accordance with the provisions of the Exports and Imports Police of the Government of India. Accordingly, the petitioner had applied and obtained REP licence which it subsequently sold to various parties for a premium.

3. In the assessment proceedings for the assessment years 1990-91 onwards the assessing officer had added the premium received on transfer of REP licence to the taxable turnover of the petitioner and assessed the same to tax at the appropriate rate.

4. Aggrieved by this assessment orders and quantifications of the tax liability, the petitioner was before the first appellate authority as well as before the Tribunal. The Tribunal, keeping in view the law declared by the Apex Court in **Vikas Sales Corporation vs. Commissioner, Commercial Taxes,** 102 STC 106, has rejected the appeals filed by the assessee.

5. Being aggrieved by those orders, the assessee is before us in these tax revision petitions . The assessee has raised the following questions of law for our consideration and decision.

> (i). Whether on the facts and circumstances of the case, the Hon'ble Appellate Tribunal was right in law in holding that sales tax under the KGST Act could be levied on the premium received by the assessee on transfer of REP Licences?
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> (ii). Whether on the facts and circumstances of the case the tribunal was right in law in holding that the transfer of REP Licences would attract the levy of sales tax under the KGST Act especially when the transfer of REP Licences was not a business, much less the main line of business carried on by the assessee?
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> (iii). Whether the tribunal was right in law and on facts in not considering the aspect as to whether the assessee was a dealer for the purposes of the KGST Act in so far as the transfer of REP Licences was concerned?

6. The Supreme Court in **Vikas Sales Corporation's case** has observed as under:

> " Import licences called replenishment licences (REP licences) or Exim scrips are "goods" for the purposes of the Tamil Nadu General Sales Tax Act, 1999, the Karnataka Sales Tax Act, 1957, and the Kerala General Sales Tax, 1963.
>
> The objective behind the issue of such licences was to provide to the registered exporters facility for importing essential inputs required for the manufacture of the products exported. These licences were made freely transferable; it was provided in the Import and Export Policy that the transfer

> of such licences did not require any endorsement or permission from the licensing authority and it was clarified that such transfer would be governed by the ordinary law. The transfer of such licences only required a letter from the transferor recording and evidencing the transfer. On that basis the transferee became the due and lawful holder of the licence and could either import the goods permitted or sell it to another in turn. The REP licences/Exim scrips have their own value; they are brought and sold as such. The original licensee or the purchaser is not bound to import the goods permissible thereunder; he can simply sell it to another and that person to yet another. These licences have an inherent value of their own and are treated as such. The fact that the licensing authority can cancel the licence has no relevance to the question as to the nature of the licences. This factor does not detract from the inherent value of the licences. They are treated and dealt with in the commercial world as merchandise, as goods. An REP licence/Exim scrip is neither a chose-in-action nor an actionable claim. It is also not in the nature of a title deed. It has a value of its own. It is by itself a property - and it is for this reason that it is freely brought and sold in the market. For all purposes and intents REP licences/Exim scrips are goods. If lottery tickets are goods, there is no reason why the licences/scrips are not goods.".

7. In our opinion, the questions of law raised by the assessee is no more debatable, in view of the law declared by the Apex Court in the case of Vikas Sales Corporation Vs. Commissioner, Commercial Taxes (102 STC

106). In that view of the matter, the questions of law raised by the assessee is answered against the assessee and in favour of the revenue.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

MS/DK.